

SECTION II

RULES GOVERNING COMPETITION

A. IDENTIFICATION AND CLASSIFICATION OF RFP REQUIREMENTS

1. Requirements

The State has established certain requirements with respect to bids to be submitted by prospective contractors. The use of "shall," "must," or "will" (except to indicate simple futurity) in the RFP indicates a requirement or condition from which a deviation if not material may be waived by the State. A deviation from a requirement is material if the deficient response is not in substantial accord with the RFP requirements, provides an advantage to one bidder over other bidders, or has a potentially significant effect on the delivery, quantity or quality of items bid,* amount paid to the supplier, or on the cost to the State. Material deviations cannot be waived.

2. Desirable Items

The words "should" or "may" in the RFP indicate desirable attributes or conditions, but are non-mandatory in nature. Deviation from, or omission of, such a desirable feature, even if material, will not in itself cause rejection of the bid.*

B. BIDDING REQUIREMENTS AND CONDITIONS

1. General

This RFP, the evaluation of responses, and the award of any resultant contract shall be made in conformance with current competitive bidding procedures as they relate to the procurement of goods and services by public bodies in the State of California. A bidder's Final Bid is an irrevocable offer for 65 days following the scheduled date for contract award specified in Section I. A bidder may extend the offer in the event of a delay of contract award.

2. RFP Documents

This RFP includes, in addition to an explanation of the State's needs which must be met, instructions which prescribe the format and content of bids to be submitted and the model(s) of the contract(s) to be executed between the State and the successful bidder(s).

If a bidder discovers any ambiguity, conflict, discrepancy, omission, or other error in this RFP, the bidder shall immediately notify the State of such error in writing and request clarification or modification of the document. Modifications will be made by addenda issued pursuant to Section II.B-7, Addenda. Such clarifications shall be given by written notice to all parties who have been furnished an RFP for bidding purposes, without divulging the source of the request. Insofar as practicable, the State will give such notices to other interested parties, but the State shall not be responsible therefore.

If the RFP contains an error known to the bidder, or an error that reasonably should have been known, the bidder shall bid at its own risk. If the bidder fails to notify the State of the error prior to the date fixed for submission of bids, and is awarded the

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contract, the bidder shall not be entitled to additional compensation or time by reason of the error or its later correction.

3. Examination of the Work

The bidder should carefully examine the entire RFP and any addenda thereto, and all related materials and data referenced in the RFP or otherwise available to the bidder, and should become fully aware of the nature and location of the work, the quantities of the work, and the conditions to be encountered in performing the work. Specific conditions to be examined may be listed in the RFP section on ADMINISTRATIVE REQUIREMENTS.

4. Questions Regarding the RFP

Bidders requiring clarification of the intent or content of this RFP or on procedural matters regarding the competitive bid process may request clarification by submitting questions, with the envelope clearly marked "Questions Relating to RFP DGS-2034 (using the RFP identification on the RFP title page), to the Department Official listed in Section I. To ensure a response, questions must be received in writing by the scheduled date(s) given in Section I. Question and answer sets will be provided to all bidders without identifying the submitters.

A bidder who desires clarification or further information on the content of the RFP, but whose questions relate to the proprietary aspect of that bidder's proposal and which, if disclosed to other bidders, would expose that bidder's proposal, may submit such questions in the same manner as above, but also marked "CONFIDENTIAL," and not later than the scheduled date specified in Section I to ensure a response. The bidder must explain why any questions are sensitive in nature. If the State concurs that the disclosure of the question or answer would expose the proprietary nature of the proposal, the question will be answered and both the question and answer will be kept in confidence. If the State does not concur with the proprietary aspect of the question, the question will not be answered in this manner and the bidder will be so notified.

If the bidder believes that one or more of the RFP requirements is onerous, unfair, or imposes unnecessary constraints to the bidder in proposing less costly or alternate solutions, the bidder may request a change to the RFP by submitting, in writing, the recommended change(s) and the facts substantiating this belief and reasons for making the recommended change. Such request must be submitted to the Department Official by the date specified in Section I for submitting a request for change. **Oral answers shall not be binding on the State.**

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5. Bidders' Conference

A Bidders' Conference may be held, during which suppliers will be afforded the opportunity to meet with State personnel and discuss the content of the RFP and the procurement process. Notification of the time and place of such conference, if held, will be made to all suppliers receiving this RFP for bidding purposes. Written questions received prior to the cutoff date for submission of such questions, as noted in Section I, will be answered at the conference without divulging the source of the query.

The State may also accept oral questions during the conference and will make a reasonable attempt to provide answers prior to the conclusion of the conference. A transcript of the discussion, or those portions which contain the questions and appropriate answers, will normally be transmitted within approximately ten (10) working days to all suppliers furnished this RFP for bidding purposes. If questions asked at the conference cannot be adequately answered during the discussion, answers will be provided with the transcribed data. Oral answers shall not be binding on the State.

6. Bidder's Intention to Submit a Bid

Suppliers who have been furnished a copy of the RFP for bidding purposes are asked to state their intention by the date specified in Section I, KEY ACTION DATES, with respect to submission of bids. The State is also interested as to a supplier's reasons for not submitting a bid; as, for example, requirements which cannot be met or unusual terms and conditions which arbitrarily raise costs. Suppliers are asked to categorize their intent as follows:

- a. Intends to submit a bid and has no problem with the RFP requirements.
- b. Intends to submit a bid, but has one or more problems with the RFP requirements for reasons stated in this response.
- c. Does not intend to submit a bid, for reasons stated in this response, and has no problem with the RFP requirements.
- d. Does not intend to submit a bid because of one or more problems with the RFP requirements for reasons stated in this response.

If suppliers have indicated significant problems with the RFP requirements, the State will examine the stated reasons for the problems and will attempt to resolve any issues in contention, if not contrary to the State's interest, and will amend the RFP if appropriate. All suppliers who have been furnished a copy of this RFP for bidding purposes will be advised by the State of any actions taken as a result of the suppliers' responses. If after such actions, a supplier determines that the requirements of the RFP unnecessarily restrict its ability to bid, the supplier is allowed five (5) working days to submit a protest to those RFP requirements or the State's action, according to the instructions contained in paragraph E-1 of this section.

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Hereafter, for the purposes of the instructions of this RFP, all suppliers who have indicated their intent to submit a Final Bid are called bidders until such time that the bidder withdraws or other facts indicate that the bidder has become nonparticipating.

7. Addenda

The State may modify this RFP by issuance of an addendum to all parties who are participating in the bidding process at the time the addendum is issued. Addenda will be numbered consecutively. If any bidder determines that an addendum unnecessarily restricts its ability to bid, the bidder is allowed five (5) working days to submit a protest to the addendum according to the instructions contained in Paragraph E-1 of this section.

8. Bonds

The State reserves the right to require a faithful performance bond or other security document as specified in the RFP from the supplier in an amount not to exceed the amount of the contract. In the event a surety bond is required by the State which has not been expressly required by the specification, the State will reimburse the supplier, as an addition to the purchase price, in an amount not exceeding the standard premium on such bond.

9. Discounts

In connection with any discount offered, except when provision is made for a testing period preceding acceptance by the State, time will be computed from date of delivery of the supplies or equipment as specified, or from date correct invoices are received in the office specified by the State if the latter date is later than the date of delivery. When provision is made for a testing period preceding acceptance by the State, date of delivery shall mean the date the supplies or equipment are accepted by the State during the specified testing period. Payment is deemed to be made, for the purpose of earning the discount, on the date of mailing the State warrant or check.

Cash discounts of less than 20 days or less than one half of one percent will not be considered in evaluating offers for award purposes unless otherwise specified by the State in the bid invitation; however, offered discounts of less than 20 days will be taken if payment is made within the discount period, even though not considered in the evaluation of offers.

10. Joint Bids

A joint bid (two or more bidders quoting jointly on one bid) may be submitted and each participating bidder must sign the joint bid. If the contract is awarded to joint bidders, it shall be one indivisible contract. Each joint bidder will be jointly and severally responsible for the performance of the entire contract, and the joint bidders must designate, in writing, one individual having authority to represent them in all matters relating to the contract. The State assumes no responsibility or obligation for the division of orders or purchases among the joint bidders.

11. Air or Water Pollution Violations

Unless the contract is less than \$5,000 or with a sole source contractor, Government Code Section 4477 prohibits the State from contracting with a person, including a

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corporation or other business association, who has been determined to be in violation of any State or federal air or water pollution control law. Government Code Section 4481 requires the State Water Resources Control Board and the Air Resources Board to notify State agencies of such persons.

Prior to an award, the Department shall ascertain if the intended awardee is a person included in notices from the Boards by reference to notices. In the event of any doubt of the intended awardee's identity or status as a person who is in violation of any State or federal air or water pollution law, the State will notify the appropriate Board of the proposed award and afford the Board the opportunity to advise the Department that the intended awardee is such a person.

No award will be made to a person who is identified either by the published notices or by advice, as a person in violation of State or federal air or water pollution control laws.

12. Fair Employment and Housing Commission Regulations

The California Government Code Section 12990 requires all State contractors to have implemented a Nondiscrimination Program before entering into any contract with the State. The Department of Fair Employment and Housing (DFEH) randomly selects and reviews State contractors to ensure their compliance with the law. DFEH periodically disseminates a list of suppliers who have not complied. Any supplier so identified is ineligible to enter into any State contract.

13. Exclusion for Conflict of Interest

No consultant shall be paid out of State funds for developing recommendations on the acquisition of EDP products or services or assisting in the preparation of a feasibility study, if that consultant is to be a source of such acquisition or could otherwise directly and/or materially benefit from State adoption of such recommendations or the course of action recommended in the feasibility study. Further, no consultant shall be paid out of State funds for developing recommendations on the disposal of State surplus EDP products, if that consultant would directly and/or materially benefit from State adoption of such recommendations.

14. Follow-on Contracts

No person, firm, or subsidiary thereof who has been awarded a consulting services contract, or a contract which includes a consulting component, may be awarded a contract for the provision of services, delivery of goods or supplies, or any other related action which is required, suggested, or otherwise deemed appropriate as an end product of the consulting services contract. Therefore, any consultant who contracts with a State agency to develop formal recommendations is precluded from contracting for any work recommended in the formal recommendations. (Formal recommendations include, among other things, feasibility studies.)

15. Disclosure of Financial Interests

Proposals in response to State procurements for assistance in preparation of feasibility studies or the development of recommendations for the acquisition of EDP products and services must disclose any financial interests (i.e., service contract, OEM agreements, remarketing agreements, etc.) that may foreseeably allow the individual or organization

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submitting the proposal to materially benefit from the State's adoption of a course of action recommended in the feasibility study or the acquisition recommendations. If, in the State's judgment, the financial interest will jeopardize the objectivity of the recommendations, the State may reject the proposal.

In addition, should a consultant establish or become aware of such a financial interest during the course of contract performance, the consultant must inform the State in writing within 10 working days. If, in the State's judgment, the newly established financial interest will jeopardize the objectivity of the recommendations, the State shall have the option of terminating the contract.

Failure to disclose a relevant financial interest on the part of a consultant will be deemed grounds for termination of the contract with all associated costs to be borne by the consultant and, in addition, the consultant may be excluded from participating in the State's bid processes for a period of up to 360 calendar days in accordance with Public Contract Code Section 12102 (j).

C. BIDDING STEPS

1. General

The procurement process to be used in this acquisition is composed of at least one phase of bid development. **REFER TO SECTION I TO DETERMINE WHICH PHASES AND STEPS ARE INCLUDED IN THIS RFP. REFERENCES IN THIS SECTION II TO STEPS NOT INCLUDED IN SECTION I ARE NOT APPLICABLE TO THIS RFP.** There is always a Final Phase, which may include a Draft Bid and revisions, and will always include a Final Bid. Prior to the Final Phase, there may be a Compliance Phase. The possible steps of the Compliance Phase are a Conceptual Proposal, Detailed Technical Proposal and revisions of either or both. A description of these phases and their steps follows.

The Final Bid is a mandatory step for all bidders; all other steps are optional. However, all bidders are strongly encouraged to follow the scheduled steps of this procurement to increase the chance of submitting a compliant Final Bid. **Cost submitted in any submission other than the Final Bid may preclude the bidder from continuing in the process.**

2. Compliance Phase

The Compliance Phase is an iterative, conversational mode of proposal and contract development. It requires the State, working together in confidence with each bidder, to assess and discuss the viability and effectiveness of the bidder's proposed methods of meeting the State's needs as reflected in the RFP. It is a departure from the rigid "either accept or reject" philosophy of traditional competitive bidding, yet it is highly competitive in nature. It provides the flexibility needed for the bidder to test a solution prior to formal submittal of the Final Bid, and it facilitates the correction of defects before they become fatal to the bid. The steps may include the submission of a Conceptual Proposal and/or a Detailed Technical Proposal by the bidder, Confidential Discussions of the bidder's proposal(s) and written Discussion Memorandum as to the correction of defects and the State's acceptance of such changes.

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a. Conceptual Proposal

The Conceptual Proposal may be included for the purpose of allowing each bidder to provide a general concept of a proposal with just enough detail to enable the evaluators to determine if the bidder is on the right track toward meeting the functional requirements as stated in the RFP; and if not, where the bidder must change a concept. This step invites the bidder to be as innovative as the RFP requirements allow in eliminating unnecessary constraints.

b. Detailed Technical Proposal

The Detailed Technical Proposal may be included for the purpose of allowing each bidder to provide a detailed technical description of its proposal to determine at an early stage whether the proposal is totally responsive to all the requirements of the RFP, and if not, which elements are not responsive and what changes would be necessary and acceptable.

c. Evaluation of Proposals and Discussion Agenda

Upon receipt of the Conceptual and Detailed Technical Proposals, the evaluation team will review each proposal in accordance with the evaluation methodology outlined in the RFP section on EVALUATION for the purpose of identifying areas in which the proposal is nonresponsive to a requirement, is otherwise defective, or in which additional clarification is required in order that the State may fully understand the ramifications of an action proposed by the bidder. As a result of this evaluation, the evaluation team will prepare an agenda of items to be discussed with the bidder, and will normally transmit the agenda to the bidder at least two working days before the scheduled meeting. The agenda may also include, in addition to the identification of discovered defects, a discussion of the bidder's proposed supplier support, implementation plans, validation plans, demonstration plans and proposed contracts, as appropriate.

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d. Confidential Discussion with Each Bidder

In accordance with the discussion agenda, the evaluation team will meet with each bidder for the purpose of discussing the Conceptual Proposal or Detailed Technical Proposal (as the case may be) in detail. The bidder may bring to the discussion those persons who may be required to answer questions or commit to changes. As the first order of business, the bidder may be asked to give a short proposal overview presentation. To the maximum extent practical, the bidder will address the major concerns of the evaluation team, as expressed in the Discussion Agenda, and should be prepared to answer any questions that may arise as a result of the presentation. The participants will then proceed to discuss each of the agenda items.

The State will not make counter proposals to a bidder's proposed solution to the RFP requirements. The State will only identify its concerns, ask for clarification, and express its reservations if a particular requirement of the RFP is not, in the opinion of the State, appropriately satisfied. The primary purpose of this discussion is to ensure that the bidder's Final Bid will be responsive.

If any contractual items have a bearing on, or are affected by, the content of the proposal, such matters may be discussed in an effort to reach agreement. (As a concurrent activity, the bidder and the State will have been working together to negotiate the proposed contract(s) which will become operative if the bidder's Final Bid is accepted by the State. Further discussion of the contractual aspect of this procurement is contained in paragraph D., CONTRACTUAL INFORMATION.)

e. Discussion Memorandum

Throughout the Confidential Discussion a written record will be kept of all items discussed, their resolution, and any changes the bidder intends to make and the State's acceptance of such changes. If the bidder's proposal, with the agreed-to changes, is acceptable to the State, such acceptance shall be noted. If agreement has not been reached on all matters during the initial discussion, such will be noted with a specific plan for resolution before the next step. These resolutions and agreements will be prepared in final form as a Discussion Memorandum (which will be the official State documentation of the discussion), and will be mailed to the bidder normally within two workdays of the discussion. If the discussion is not completed in one meeting and is continued in subsequent meetings, the Discussion Memoranda will follow the meeting at which the discussion is concluded. If a bidder discovers any discrepancy, omission, or other error in the memorandum, the bidder shall immediately notify the State of such error in writing and request clarification or correction. **Oral statements made by either party shall not obligate either party.**

f. Rejection of Bidder's Proposal

If, after full discussion with a bidder, the State is of the opinion that the bidder's proposal (Conceptual Proposal or Detailed Technical Proposal, as the case may be) cannot be restructured or changed in a reasonable time to satisfy the needs of the State, and that further discussion would not likely result in an acceptable proposal in

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a reasonable time, the bidder will be given written notice that the proposal has been rejected and that a Final Bid submitted along such lines would be nonresponsive.

g. Submission of Amended Proposal

If, at the conclusion of the Confidential Discussion, the State determines that required and agreed-to changes can only be fully confirmed through the submission of an amended proposal (Conceptual Proposal or Detailed Technical Proposal, as the case may be), the State may require the submission of an addendum consisting only of those pages which were in doubt or a complete resubmittal. Similarly, if the bidder wishes confirmation that the changes the bidder intends to make, in accordance with the Discussion Memorandum, are acceptable to the State, the bidder may request and receive permission, if the time permits, to submit such addendum within a reasonable time after the conclusion of the Confidential Discussion. In either event, the State will advise the bidder as to the acceptability of the amended proposal, or may schedule another discussion period, if in the State's opinion, such a discussion is desirable.

3. Final Phase

The purpose of the Final Phase is to obtain bids that are responsive in every respect. This phase may include a Draft Bid and will always include a Final Bid, as described below:

a. Draft Bid

The purpose of the Draft Bid is to provide the State with an "almost final" bid in order to identify any faulty administrative aspect of the bid which, if not corrected, could cause the Final Bid to be rejected for ministerial reasons.

The Draft Bid should correspond to submittals and agreements of the Compliance Phase, if required, and must be complete in every respect as required by the RFP section on PROPOSAL AND BID FORMAT, except cost. The inclusion of cost information in the Draft Bid may be a basis for rejecting the bid and notifying the bidder that further participation in the procurement is prohibited.

REVIEW OF THE DRAFT BID BY THE STATE MAY INCLUDE CONFIDENTIAL DISCUSSIONS WITH INDIVIDUAL BIDDERS AND WILL PROVIDE FEEDBACK TO THE BIDDER PRIOR TO SUBMITTAL OF THE FINAL PROPOSAL. IF NO SUCH DISCUSSION STEP IS INCLUDED IN THE KEY ACTION DATES THEN THE REVIEW OF THE DRAFT BID DOES NOT INCLUDE ANY ASSESSMENT OF THE BID'S RESPONSIVENESS TO THE TECHNICAL REQUIREMENTS OF THE RFP. Regardless of the inclusion of a confidential discussion, the State will notify the bidder of any defects it has detected in the Draft Bid, or of the fact that it did not detect any such defects. Such notification is intended to minimize the risk that the Final Bid will be deemed defective; however, THE STATE WILL NOT PROVIDE ANY WARRANTY THAT ALL DEFECTS HAVE BEEN DETECTED AND THAT SUCH NOTIFICATION WILL NOT PRECLUDE REJECTION OF THE FINAL BID IF SUCH DEFECTS ARE LATER FOUND.

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If the State finds it necessary, the State may call for revised Draft Bid submittals, or portions thereof. The bidder will be notified of defects discovered in these submittals as well. AGAIN THE STATE WILL NOT PROVIDE ANY WARRANTY THAT ALL DEFECTS HAVE BEEN DETECTED AND THAT SUCH NOTIFICATION WILL NOT PRECLUDE REJECTION OF THE FINAL BID IF SUCH DEFECTS ARE LATER FOUND.

b. Final Bid

The Final Bid must be complete, including all cost information, required signatures, contract language changes agreed to in writing and corrections to those defects noted by the State in its review of the Draft Bid. If required in the RFP section PROPOSAL AND BID FORMAT, cost data (as identified in the above referenced section) must be submitted under separate, sealed cover. CHANGES THAT APPEAR IN THE FINAL BID, OTHER THAN CORRECTION OF DEFECTS, INCREASE THE RISK THAT THE FINAL BID MAY BE FOUND DEFECTIVE.

4. Confidentiality

FINAL BIDS ARE PUBLIC UPON OPENING; HOWEVER, THE CONTENTS OF ALL PROPOSALS, DRAFT BIDS, CORRESPONDENCE, AGENDA, MEMORANDA, WORKING PAPERS, OR ANY OTHER MEDIUM WHICH DISCLOSES ANY ASPECT OF A BIDDER'S PROPOSAL SHALL BE HELD IN THE STRICTEST CONFIDENCE UNTIL NOTICE OF INTENT TO AWARD. BIDDERS SHOULD BE AWARE THAT MARKING A DOCUMENT "CONFIDENTIAL" OR "PROPRIETARY" IN A FINAL BID WILL NOT KEEP THAT DOCUMENT FROM BEING RELEASED AFTER NOTICE OF INTENT TO AWARD AS PART OF THE PUBLIC RECORD, UNLESS A COURT HAS ORDERED THE STATE NOT TO RELEASE THE DOCUMENT. THE CONTENT OF ALL WORKING PAPERS AND DISCUSSIONS RELATING TO THE BIDDER'S PROPOSAL SHALL BE HELD CONFIDENTIAL INDEFINITELY UNLESS THE PUBLIC INTEREST IS BEST SERVED BY AN ITEM'S DISCLOSURE BECAUSE OF ITS DIRECT PERTINENCE TO A DECISION, AGREEMENT OR THE EVALUATION OF THE BID. ANY DISCLOSURE OF CONFIDENTIAL INFORMATION BY THE BIDDER IS A BASIS FOR REJECTING THE BIDDER'S PROPOSAL AND RULING THE BIDDER INELIGIBLE FOR FURTHER PARTICIPATE. ANY DISCLOSURE OF CONFIDENTIAL INFORMATION BY A STATE EMPLOYEE IS A BASIS FOR DISCIPLINARY ACTION, INCLUDING DISMISSAL FROM STATE EMPLOYMENT, AS PROVIDED BY GOVERNMENT CODE SECTION 19570 ET SEQ. TOTAL CONFIDENTIALITY IS PARAMOUNT; IT CANNOT BE OVER EMPHASIZED.

5. Submission of Proposals and Bids

The instructions contained herein apply to the Final Bid. They also apply to the Conceptual Proposal, Detailed Technical Proposal, and Draft Bid, except as noted.

a. Preparation

Proposals and bids are to be prepared in such a way as to provide a straightforward, concise delineation of capabilities to satisfy the requirements of this RFP. Expensive bindings, colored displays, promotional materials, etc., are not necessary or desired. EMPHASIS SHOULD BE CONCENTRATED ON CONFORMANCE TO THE RFP INSTRUCTIONS, RESPONSIVENESS TO THE RFP REQUIREMENTS, AND ON COMPLETENESS AND CLARITY OF CONTENT.

As stated above, the State's evaluation of Conceptual and Detailed Technical Proposals is preliminary, and the review of Draft Bids is cursory. Therefore, bidders are cautioned to not rely on the State, during these evaluations and reviews, to discover and report to the bidders all defects and errors in the submitted documents.

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Before submitting each document, the bidder should carefully proof it for errors and adherence to the RFP requirements.

b. Bidder's Cost

Costs for developing proposals and bids are the responsibility entirely of the bidder and shall not be chargeable to the State.

c. Completion of Proposals and Bids

Proposals and bids must be complete in all respects as required by the RFP section on PROPOSAL AND BID FORMAT. A Final Bid may be rejected if it is conditional or incomplete, or if it contains any alterations of form or other irregularities of any kind. A Final Bid must be rejected if any such defect or irregularity constitutes a material deviation from the RFP requirements. The Final Bid must contain all costs required by the RFP sections on COST and PROPOSAL AND BID FORMAT, setting forth a unit price and total price for each unit price item, and a total price for each lump sum price item in the schedule, all in clearly legible figures. If required in the RFP section PROPOSAL AND BID FORMAT, cost data (as identified in the above referenced section) must be submitted under separate, sealed cover. Draft Bids must contain all information required in the Final Bid except cost. Exhibit II-A at the end of this Section II entitled COMPETITIVE BIDDING AND BID RESPONSIVENESS emphasizes the requirements of competitive bidding and contains examples of common causes for rejection of bids. Bidders are encouraged to review this exhibit.

d. False or Misleading Statements

Bids which contain false or misleading statements, or which provide references which do not support an attribute or condition claimed by the bidder, may be rejected. If, in the opinion of the State, such information was intended to mislead the State in its evaluation of the bid, and the attribute, condition, or capability is a requirement of this RFP, it will be the basis for rejection of the bid.

e. Signature of Bid

A cover letter (which shall be considered an integral part of the Final Bid) and Standard Agreement Form 213, or a Bid Form shall be signed by an individual who is authorized to bind the bidding firm contractually. The signature must indicate the title or position that the individual holds in the firm. An unsigned Final Bid shall be rejected.

The Draft Bid must also contain the cover letter and Form 213, or Bid Form, similarly prepared, including the title of the person who will sign, but need not contain the signature. The Conceptual Proposal and Detailed Technical Proposal need not contain the cover letter and Form 213, or Bid Form.

f. Delivery of Proposals and Bids

Mail or deliver proposals and bids to the Department Official listed in Section I. If mailed, use certified or registered mail with return receipt requested.

Proposals and bids must be received in the number of copies stated in the RFP section on PROPOSAL AND BID FORMAT and not later than the dates and times specified in Section I and in the individual schedules provided the bidders. One copy

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must be clearly marked "Master Copy." All copies of proposals and bids must be under sealed cover which is to be plainly marked "CONCEPTUAL PROPOSAL," "DETAILED TECHNICAL PROPOSAL," "DRAFT BID," or "FINAL BID" for "RFP DGS 2034". Also, the sealed cover of all submittals, except the Final Bid, shall be clearly marked "CONFIDENTIAL," and shall state the scheduled date and time for submission. Proposals and Draft Bids not submitted under sealed cover will be returned for sealing. Final Bids not received by the date and time specified in Section I, or not sealed, will be rejected. If required in the RFP section PROPOSAL AND BID FORMAT, all cost data (as identified in the above referenced section) must be submitted under separate, sealed cover and clearly marked "COST DATA." If cost data is required to be submitted separately sealed, and is not submitted in this manner, the bid will be rejected. Proposals and bids submitted under improperly marked covers may be rejected. If discrepancies are found between two or more copies of the proposal or bid, the proposal or bid may be rejected. However, if not so rejected, the Master Copy will provide the basis for resolving such discrepancies. If one copy of the Final Bid is not clearly marked "Master Copy," the State may reject the bid; however, the State may at its sole option select, immediately after bid opening, one copy to be used as the Master Copy.

g. Withdrawal and Resubmission/Modification of Proposals and Bids

A bidder may withdraw its Conceptual Proposal, Detailed Technical Proposal or Draft Bid at any time by written notification. A bidder may withdraw its Final Bid at any time prior to the bid submission time specified in Section I by submitting a written notification of withdrawal signed by the bidder authorized in accordance with Paragraph C-5-e, Signature of Bid. The bidder may thereafter submit a new or modified bid prior to such bid submission time. Modification offered in any other manner, oral or written, will not be considered. Final Bids cannot be changed or withdrawn after the time designated for receipt, except as provided in Paragraph 7.d.(7) of this section.

6. Rejection of Bids

The State may reject any or all bids and may waive any immaterial deviation or defect in a bid. The State's waiver of any immaterial deviation or defect shall in no way modify the RFP documents or excuse the bidder from full compliance with the RFP specifications if awarded the contract.

7. Evaluation and Selection Process

a. General

Proposals and bids will be evaluated according to the procedures contained in the RFP section on EVALUATION. Special instructions and procedures apply to Conceptual Proposals, Detailed Technical Proposals, and Draft Bids.

b. Evaluation Questions

During the evaluation and selection process, the State may desire the presence of a bidder's representative for answering specific questions, orally and/or in writing.

c. Demonstration

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This procurement may require a demonstration of the bidder's response to specific requirements (including benchmark requirements) before final selection in order to verify the claims made in the bid, corroborate the evaluation of the bid, and confirm that the hardware and software are actually in operation; in which case prior notice will be given. The bidder must make all arrangements for demonstration facilities at no cost to the State. The location of the demonstration will be determined by the bidder; however, its performance within California is preferred and will be attended at the State's expense. Demonstration outside California will be attended only if the bidder agrees to reimburse the State for travel and per diem expenses. The State reserves the right to determine whether or not a demonstration has been successfully passed. See Section on DEMONSTRATIONS for additional information.

d. Errors in the Final Bid

An error in the Final Bid may cause the rejection of that bid; however, the State may at its sole option retain the bid and make certain corrections.

In determining if a correction will be made, the State will consider the conformance of the bid to the format and content required by the RFP, and any unusual complexity of the format and content required by the RFP.

- (1) If the bidder's intent is clearly established based on review of the complete Final Bid submittal, the State may at its sole option correct an error based on that established intent.
- (2) The State may at its sole option correct obvious clerical errors.
- (3) The State may at its sole option correct discrepancy and arithmetic errors on the basis that if intent is not clearly established by the complete bid submittal the Master Copy shall have priority over additional copies, the bid narrative shall have priority over the contract, the contract shall have priority over the cost sheets, and within each of these, the lowest level of detail will prevail. If necessary, the extensions and summary will be recomputed accordingly, even if the lowest level of detail is obviously misstated. The total price of unit-price items will be the product of the unit price and the quantity of the item. If the unit price is ambiguous, unintelligible, uncertain for any cause, or is omitted, it shall be the amount obtained by dividing the total price by the quantity of the item.
- (4) The State may at its sole option correct errors of omission, and in the following four situations, the State will take the indicated actions if the bidder's intent is not clearly established by the complete bid submittal.
 - (a) If an item is described in the narrative and omitted from the contract and cost data provided in the bid for evaluation purposes, it will be interpreted to mean that the item will be provided by the bidder at no cost.
 - (b) If a minor item is not mentioned at all in the Final Bid and is essential to satisfactory performance, the bid will be interpreted to mean that the item will be provided at no cost.

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- (c) If a major item is not mentioned at all in the Final Bid, the bid will be interpreted to mean that the bidder does not intend to supply that item.
- (d) If a major item is omitted, and the omission is not discovered until after contract award, the bidder shall be required to supply that item at no cost.
- (5) If a bidder does not follow the instructions for computing costs not related to the contract (e.g., State personnel costs), the State may reject the bid, or at its sole option, recompute such costs based on instructions contained in the RFP.

If the recomputations or interpretations, as applied in accordance with this section, subparagraph d, result in significant changes in the amount of money to be paid to the bidder (if awarded the contract) or in a requirement of the bidder to supply a major item at no cost, the bidder will be given the opportunity to promptly establish the grounds legally justifying relief from its bid.

IT IS ABSOLUTELY ESSENTIAL THAT BIDDERS CAREFULLY REVIEW THE COST ELEMENTS IN THEIR FINAL BID, SINCE THEY WILL NOT HAVE THE OPTION TO CHANGE THEM AFTER THE TIME FOR SUBMITTAL.

- (6) In the event an ambiguity or discrepancy between the general requirements described in Section IV (Proposed Program) and the specific technical requirements set forth in Section VIII (Technical Requirements) is detected after the opening of bids, Section VIII, and the bidder's response thereto, shall have priority over Section IV, and the bidder's response thereto. Refer to Paragraph B-2 regarding immediate notification to State contact when ambiguities, discrepancies, omissions, etc. are discovered.
- (7) The State may declare the Final Proposal to be an additional Draft Proposal in the event that the State Evaluation Team determines that Final Proposals from all Bidder's contained material deviations and that it is in the best interest of the State to continue the bid process. If this occurs, the State will issue an addendum to the RFP and a Confidential Discussion will be held with each Bidder that submitted a flawed Final Proposal and any other Bidder that requests a Confidential Discussion. Each Bidder will be instructed of the due date for the submission of a new completed Final Proposal to the State. This submission must conform to all of the requirements of the original Final Proposal as amended by any subsequent addenda. During the evaluation of the new Final Proposal, the State Evaluation Team may request the Bidder to clarify any area of the Proposal that the State Evaluation Team determines to be unclear. However, this request for clarification will not be an opportunity for the Bidder to change its proposal.

8. Award of Contract

Award of contract, if made, will be in accordance with the RFP section on EVALUATION to a responsible bidder whose Final Bid complies with all the requirements of the RFP documents and any addenda thereto, except for such immaterial defects as may be waived by the State. Award, if made, will be made within sixty five (65) days after the scheduled date for Contract Award specified in

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Section I; however, a bidder may extend the offer beyond 65 days in the event of a delay of contract award.

The State reserves the right to determine the successful bidder(s) either on the basis of individual items or on the basis of all items included in its RFP, unless otherwise expressly provided in the State's RFP. The State reserves the right to modify or cancel in whole or in part its RFP.

Unless the bidder specifies otherwise in its bid, the State may accept any item or group of items of any bid. The State reserves the right to modify or cancel in whole or in part its RFP.

Written notification of the State's intent to award will be made to all bidders. If a bidder, having submitted a Final Bid, can show that its bid, instead of the bid selected by the State, should be selected for contract award according to the rules of Paragraph C-7, the bidder will be allowed five (5) working days to submit a protest to the Intent to Award, according to the instructions contained in Paragraph E-1 of this section.

9. Debriefing

A debriefing may be held after contract award at the request of any bidder for the purpose of receiving specific information concerning the evaluation. The discussion will be based primarily on the technical and cost evaluations of the bidder's Final Bid. A debriefing is not the forum to challenge the RFP specifications or requirements.

D. CONTRACTUAL INFORMATION

1. Contract Form

The State has model contract forms to be used by State agencies when contracting for goods and services. The model contract(s) appropriate for the specific requirements of this RFP are included in the RFP.

2. Specific Terms and Conditions

In traditional competitive bidding, the contract to be awarded is included in the solicitation document in its final form, and any alteration by a bidder will result in rejection of its bid. Terms and conditions which do not comply in substance with all material requirements of the RFP, which are contrary to the best interests of the State, or which are in opposition to State policy will not be accepted and may cause rejection of the proposal.

3. Term of Contract

The State intends to retain the required goods and services for at least the period specified elsewhere in this RFP. Ideally, the term of the contract will be for the specified period. If the State requires the contract to be terminated during the contract period, such a requirement will be specified in the RFP section on ADMINISTRATIVE REQUIREMENTS. The State will accept a contract for a longer period than specified if, at the sole option of the State, the contract may be terminated at the end of the period

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specified with or without the payment of termination charges. Such termination charges, if any, must be included in the evaluated cost of the bid.

E. OTHER INFORMATION

1. Protests

Before a protest is submitted regarding any issue other than selection of the "successful supplier," the bidder must make full and timely use of the procedures described in this Section II to resolve any outstanding issue(s) between the bidder and the State. The procurement procedure is designed to give the bidder and the State adequate opportunity to submit questions and discuss the requirements, proposals and counter proposals before the Final Bid is due. The protest procedure is made available in the event that a bidder cannot reach a fair agreement with the State after exhausting these procedures. In such cases, a protest may be submitted according to the procedure below. Protests regarding any issue other than selection of the "successful supplier" will be heard and resolved by the Deputy Director of the Department of General Services Procurement Division whose decision will be final.

If a bidder has submitted a bid which it believes to be totally responsive to the requirements of the RFP and to be the bid that should have been selected according to the evaluation procedure in the Section on EVALUATION and the bidder believes the State has incorrectly selected another bidder for award, the bidder may submit a protest of the selection as described below. Protests regarding selection of the "successful supplier" will be heard and resolved by the State Board of Control whose decision will be final.

All protests must be made in writing, signed by an individual authorized under Paragraph C-5-e, Signature of Bid, and contain a statement of the reason(s) for protest; citing the law, rule, regulation or procedures on which the protest is based. The protester must provide facts and evidence to support the claim. Protests must be mailed or delivered to:

Street Address:

Deputy Director
Procurement Division
707 3rd Street, 2nd Floor
West Sacramento, CA
95605

Mailing Address:

SAME

All protests to the RFP or protests concerning the evaluation, recommendation, or other aspects of the selection process must be received by the Deputy Director of the Procurement Division as promptly as possible, but not later than the respective times and dates specified in Section I for such protests or the respective date of the Notification of Intent to Award, whichever is later. Certified or registered mail must be used unless delivered in person, in which case the protester should obtain a receipt of delivery.

2. News Releases

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Any publications or news releases relating to a contract resulting from this RFP shall not be made without **prior written approval** of the Department Official listed in Section I.

3. Disposition of Proposals and Bids

All materials submitted in response to this RFP will become the property of the State of California and will be returned only at the State's option and at the bidder's expense. The Master Copy shall be retained for official files and will become a public record after the date and time for Final Bid submission as specified in Section I, KEY ACTION DATES. However, confidential financial information submitted in support of the requirement to show bidder responsibility will be returned upon request.

4. Contacts for Information

Oral communications of department officers and employees concerning this RFP shall not be binding on the State and shall in no way excuse the bidder of any obligations set forth in this RFP.

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Exhibit II-A

COMPETITIVE BIDDING AND BID RESPONSIVENESS

The purpose of competitive bidding is to secure public objectives in the most value-effective manner and avoid the possibilities of graft, fraud, collusion, etc. Competitive bidding is designed to benefit the public body (the State, in the present context), and is not for the benefit of the bidders. It is administered to accomplish its purposes with sole reference to the public interest. It is based upon full and free bidding to satisfy State specifications, and acceptance by the State of the most value-effective solution to the State's requirements, as determined by the evaluation criteria contained in the RFP.

Competitive bidding is not defined in any single statute but is more in the nature of a compendium of numerous court decisions. From such court decisions, the following rules have evolved, among others:

1. Invitations for Bids must provide a basis for full and fair competitive bidding among bidders on a common standard, free of restrictions tending to stifle competition.
2. The State may modify the RFP, prior to the date fixed for submission of bids, by issuance of an addendum to all parties who have been furnished with the RFP for bidding purposes.
3. To have a valid bid, the bid must respond and conform to the invitation, including all the documents which are incorporated therein. A bid which does not literally comply may be rejected.
4. For a variance between the request for bids and the bid to be such as to preclude acceptance (the bid must be rejected), the variance or deviation must be a material one.
5. State agencies usually have the express or implied right to reject any and all bids in the best interests of the State. Bids cannot, however, be selectively rejected without cause.
6. Bids cannot be changed after the time designated for receipt and opening thereof. No negotiation as to the scope of the work, amount to be paid, or contractual terms is permitted.
7. A competitive bid, once opened and declared, is in the nature of an irrevocable option and a contract right of which the public agency cannot be deprived without its consent, unless the requirements for rescission are present. All bids become public documents.
8. Bids cannot be accepted "in part," unless the invitation specifically permits such an award.
9. Contracts entered into through the competitive bidding process cannot later be amended, unless the Invitation for Bids includes a provision, to be incorporated in the contract awarded, providing for such amendment.

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Exhibit II–A
(Continued)

Since competitive procurement became the required method for securing certain EDP goods or services, the State has received a number of bids which were deemed to be nonresponsive to the Invitation for Bids or which could not be considered as valid bids within the competitive bidding procedures. Nonresponsive bids or bids which contain qualifications must be rejected. Many of the causes for rejection arise from either an incomplete understanding of the competitive bidding process or administrative oversight on the part of the bidders. The following examples are illustrative of more common causes for rejection of bids. These examples are listed to assist potential bidders in submission of responsive bids.

1. A bid stated, "The prices stated within are for your information only and are subject to change."
2. A bid stated, "This proposal shall expire thirty (30) days from this date unless extended in writing by the ____ Company." (In this instance award was scheduled to be approximately 45 days after bid submittal date.)
3. A bid for lease of EDP equipment contained lease plans of a duration shorter than that which had been requested in the IFB.
4. A personal services contract stated, "_____, in its judgment, believes that the schedules set by the State are extremely optimistic and probably unobtainable. Nevertheless, ____ will exercise its best efforts..."
5. A bid stated, "This proposal is not intended to be of a contractual nature."
6. A bid contained the notation "prices are subject to change without notice."
7. A bid was received for the purchase of EDP equipment with unacceptable modifications to the Purchase Contract.
8. A bid for lease of EDP equipment contained lease plans of a duration longer than that which had been requested in the IFB with no provision for earlier termination of the contract.
9. A bid for lease of EDP equipment stated, "...this proposal is preliminary only and the order, when issued, shall constitute the only legally binding commitment of the parties."
10. A bid was delivered to the wrong office.
11. A bid was delivered after the date and time specified in the IFB.
12. An IFB required the delivery of a performance bond covering 25 percent of the proposed contract amount. The bid offered a performance bond to cover "x" dollars which was less than the required 25 percent of the proposed contract amount.
13. A bid did not meet contract goal for DVBE participation and did not follow the steps required by the bid to achieve a "good faith effort."
14. A bid appeared to meet contract goal for DVBE participation with the dollars submitted, but the supplier had miscalculated the bid costs. When these corrections were made by the State, the supplier's price had increased and the dollars committed for DVBE participation no longer met goal. The supplier had not followed the steps to achieve a "good faith effort."